

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING,

Plaintiff,

v.

Case No. 1:06-CV-479

A. MORALES, et al.,

HON. GORDON J. QUIST

Defendants.

/

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it Plaintiff's Objections to the report and recommendation dated August 2, 2006, in which Magistrate Judge Brenneman recommended that Plaintiff's complaint be dismissed without prejudice for failure to demonstrate exhaustion as required by 42 U.S.C. § 1997e(a). In particular, the magistrate judge concluded that Plaintiff failed to demonstrate exhaustion with regard to Grievance No. ICF 0308 16831 2E1 because he pursued it only through Step II, and that Plaintiff failed to demonstrate exhaustion with regard to Grievance No. ICF 0310 2047 28F because it was deemed untimely at Steps I through III. After conducting a de novo review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

In his Objections, Plaintiff does not contend that the magistrate judge erred in concluding that Plaintiff failed to demonstrate that he properly exhausted the earlier-filed grievance, Grievance No. ICF 0308 16831 2E1. Rather, he argues that he properly exhausted the later-filed Grievance, Grievance No. ICF 0310 2047 28F, because while that grievance was denied at Step I as being untimely, the warden accepted Plaintiff's explanation for the delay (Plaintiff says that he filed the

later, untimely, grievance because the first grievance did not list all of the individuals involved) at Step II but denied the grievance as “without merit.” Plaintiff does not dispute, however, that his grievance was rejected at Step III for being untimely. Based upon its review of the Step II Grievance Response, however, the Court finds nothing to indicate that the warden did not also consider the grievance as untimely, and nothing in the response states that the warden accepted Plaintiff’s reason for the delay as excusing the untimely grievance. The magistrate judge was thus correct to conclude that the grievance was rejected as untimely at all levels. Accordingly, Plaintiff failed to demonstrate proper exhaustion. See Woodford v. Ngo, 126 S. Ct. 2378, 2386-88 (2006). Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge’s Report and Recommendation issued August 2, 2006 (docket no. 4) is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Plaintiff’s complaint is **DISMISSED WITHOUT PREJUDICE** for failure to demonstrate exhaustion as required by 42 U.S.C. § 1997e(a).

This case is **concluded**.

Dated: October 4, 2006

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE